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VIETNAM INTERNATIONAL LAW FIRM

Briefing note

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Vietnam: Foreign share ownership in Vietnamese banks

On 3 January 2014, the Government of Vietnam issued a new decree on the acquisition of shares by foreign investors in credit institutions in Vietnam ("the Decree"). The new decree introduces significant new changes of importance to foreign investors investing in the banking sector in Vietnam.

We have outlined in this briefing the key changes introduced by the Decree which are significant for foreign investors.

Broader scope

- The Decree has a broader scope of application covering Vietnamese credit institutions, including not just banks, but also finance companies and finance leasing companies.

Broader definition of foreign investor

- "Foreign investor" was previously defined to cover just foreign organizations and individuals. The Decree now broadens the definition of "foreign investor" to include foreign organizations' branches in Vietnam (effectively branches of foreign banks) and organizations, closed-end funds, member funds and securities investment companies established in Vietnam with more than 49% foreign ownership. This means that shares held by foreign banks' branches and companies with more than 49% foreign ownership will count towards the foreign ownership limits for a local bank.

Approval of the State Bank of Vietnam not required

Under the Decree, approval of the State Bank of Vietnam ("SBV") is not required unless an acquisition reaches any of the following thresholds:

1. 5% or more of the shares and each subsequent acquisition;
2. at least 10% of the shares are held by a foreign non-strategic investor; and
3. any acquisition by a foreign strategic investor (which must hold at least 10% and up to 20% of the shares).

Item (3) also means that a strategic acquisition of more than a 15%, but less than 20%, shareholding is no longer subject to the Prime Minister's approval.

Foreign ownership limits – new exceptions

Specific foreign ownership limits under the Decree are shown in this table:

Ownership limit	Old regulations	New regulations
5%	Non-credit institution	Individual
10%	Credit institution (but non-strategic)	N/A
15%	Strategic	Non-strategic (Higher % subject to Prime Minister approval on restructuring of bad debts)
20%	Strategic (Prime Minister approval)	Strategic (higher % subject to Prime Minister approval on restructuring of bad debts)
30%	Total foreign ownership	Total foreign ownership (higher % subject to Prime Minister approval on restructuring of bad debts)

- The Decree maintains the cap of 30% total foreign ownership in a local bank, as under the old regulations. However, the Decree introduces new exceptions for foreign investors owning more than 30% of the shares in a local bank undergoing restructuring of bad debts, subject to approval by the Prime Minister on a case by case basis. In that case, the ownership limit of a single foreign investor (15% for non-strategic and 20% for strategic) could be lifted accordingly.
- Under the Decree, a foreign strategic investor must hold or undertake to hold at least 10% of the shares of the target local bank (while the old regulation was silent on the specific ownership ratio). However, unlike the old regulations, a foreign investor which holds less than 10% of the shares in one local bank in Vietnam now may still be a strategic investor in another local bank.

Strategic investor requirement maintained

- The Decree maintains the same strategic investor requirements, which are that the strategic investor must be a foreign bank with a total asset value of at least US$20 billion. However, a non-strategic investor is only required to have:
  - a share capital of at least US$1 billion if not a foreign credit institution or
  - a total asset value of at least US$10 billion if a foreign credit institution.

Seats on the board

- Under the old regulations, a foreign investor may have seats on the board of two independent local banks. However, that is only permitted under the Decree if the two banks are parent-subsidiary or one of the entities is undergoing restructuring.

Lock up period for foreign investors

- The Decree retains the lock-up period of 5 years for foreign strategic investors. In addition, the Decree imposes a lock-up period of 3 years on any foreign investor holding 10% or more of the shares of a local bank.

Implementation

- Decree 01/2014/ND-CP announced by the Government of Vietnam on 3 January 2014 on the acquisition of shares in credit institutions in Vietnam by foreign investors will take effect on 20 February 2014 in place of Decree 69/2007/ND-CP dated 20 April 2007.

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Contacts

VILAF

Phong, Tran Tuan
Managing Partner, Hanoi, VILAF
E: phong@vilaf.com.vn

Duyen, Vo Ha
Managing Partner, HCMC, VILAF
E: duyen@vilaf.com.vn

Clifford Chance

Andrew Matthews
Partner, Bangkok
E: andrew.matthews
@cliffordchance.com